

translation

PATENT COOPERATION TREATY

PCT/EP2003/011288



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|   |   |   |
|---|---|---|
| Applicant's or agent's file reference<br>HER 02-004-PCT                                     | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |   |
| International application No.<br>PCT/EP2003/011288  | International filing date (day/month/year)<br>11 October 2003 (11.10.2003)  | Priority date (day/month/year)<br>27 December 2002 (27.12.2002) |
| International Patent Classification (IPC) or national classification and IPC<br>E21C 35/193 |   |   |
| Applicant<br>WIRTGEN GMBH   |   |   |

|    |   |
|----|---|
| 1. | This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.  |
| 2. | This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.<br><br><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).<br><br>These annexes consist of a total of <u>3</u> sheets.  |
| 3. | This report contains indications relating to the following items:<br>I <input checked="" type="checkbox"/> Basis of the report<br>II <input type="checkbox"/> Priority<br>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability<br>IV <input type="checkbox"/> Lack of unity of invention<br>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement<br>VI <input type="checkbox"/> Certain documents cited<br>VII <input type="checkbox"/> Certain defects in the international application<br>VIII <input type="checkbox"/> Certain observations on the international application |

|   |   |
|---|---|
| Date of submission of the demand<br>23 June 2004 (23.06.2004) | Date of completion of this report<br>21 March 2005 (21.03.2005) |
| Name and mailing address of the IPEA/EP                       | Authorized officer  |
| Facsimile No.   | Telephone No.   |

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/011288

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
 pages 1-10, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, as amended (together with any statement under Article 19  
 pages \_\_\_\_\_, filed with the demand  
 pages 1-10, filed with the letter of 13 January 2005 (13.01.2005)
- ☒ the drawings:  
 pages 1/3-3/3, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/11288

## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

|                               |        |      |     |
|-------------------------------|--------|------|-----|
| Novelty (N)                   | Claims | 1-10 | YES |
|                               | Claims |      | NO  |
| Inventive step (IS)           | Claims | 1-10 | YES |
|                               | Claims |      | NO  |
| Industrial applicability (IA) | Claims | 1-10 | YES |
|                               | Claims |      | NO  |

### 2. Citations and explanations

- Document DE-4322401 (D1), which is cited by the applicant, discloses a cutting tool for a cutting machine, the cutting tool having a base part (20) and a bit holder (30) provided with a plug-in attachment (31) retained in a socket (25) of the base part, the socket communicating with the surroundings through one or more openings. The bit holder rests with a stop (32) on the stop (23) of the base part, the base part having a shoulder (28) that forms an angle with the stop, and a gap (36) that acts as a resinking space is formed between the base part shoulder and the side of the bit holder that faces the shoulder.

The subject matter of claim 1 differs from the cutting tool disclosed in D1 in that at least parts of at least the opening formed by the socket are closed by a sealing element and the sealing element is designed in such a way that it bridges said gap. Consequently, the objective technical problem addressed is that of providing a seal between the socket and the bit holder which is unaffected by tolerances and reliably compensates the wear-related settling of the resinking space.

Although a person skilled in the art would consider arranging the liquid seal (18) disclosed in WO-9945238 (D2; see page 6, line 10) between the socket (11) and the bit holder (5) in order to solve the sealing problem found in D1, he would have no reason to design such a sealing element between the socket (25) and the bit holder (30) in D1 in such a way that it bridges the gap that acts as a resinking space and thus reliably compensates the wear-related settling of the resinking space.

The subject matter of claim 1 therefore meets the requirements of PCT Article 33 for novelty, inventive step and industrial applicability.

2. Dependent claims 2-10 likewise meet the novelty, inventive step and industrial applicability requirements of PCT Article 33.